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Bill to be introduced in the Council of the Governor of Fort St. George for the purpose of making Laws and Regulations.

Under rule 18 of the Madras Legislative Council Rules, the following Bill, together with the Statement of Objects and Reasons, is published for general information :—

BILL No. 18 OF 1922.

The Madras Irrigation Bill.

Preamble. WHEREAS it is expedient to amend the law relating to irrigation and the levy of water-cess in the Presidency of Madras; and WHEREAS the previous sanction of the the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called the Madras Irrigation Act, 192 .

Extent and commencement. **2.** It extends to the whole of the Presidency of Madras and shall come into force at once.

Repeal. **3.** The Madras Compulsory Labour Act, 1858, and the Madras Irrigation Cess Act, 1865, are hereby repealed.

Definitions. **4.** In this Act, unless there is anything repugnant in the subject or context,—

"Collector." (1) "Collector" includes any officer appointed by the Local Government to exercise all or any of the powers of a Collector under this Act.

"Drainage-work." (2) "Drainage-work" includes channels, either natural or artificial, for the discharge of waste or surplus water and all works connected with or auxiliary to such channels, and escape-channels from an irrigation work, dams, weirs, embankments, sluices, groins and all works for the protection of lands from flood or from erosion, formed or maintained by the Government, whether wholly or in part, but does not include works for the removal of sewage.

"Estate." (3) "Estate" means—

(*a*) any permanently-settled estate or temporarily-settled zamindari;

(*b*) any portion of such permanently-settled estate or temporarily-settled zamindari which is separately registered in the office of the Collector;

(*c*) any unsettled pálaiyam or jágir;

(*d*) any inam village of which the grant has been made, confirmed or recognized by the British Government or any separated part of such village;

(*c*) any portion, consisting of one or more villages, of any of the estates specified above in clauses (*a*), (*b*) and (*c*) which is held on a permanent under-tenure.

"Government land." (4) "Government land" means any land not forming nor included in an estate.

"Irrigation-officer." (5) "Irrigation-officer" includes any person appointed by the Local Government to exercise all or any of the functions of an Irrigation-officer under this Act.

"Irrigation work." (6) "Irrigation work" includes—

(*a*) all canals, channels, tanks, reservoirs and wells constructed, maintained or controlled by the Government whether wholly or in part or for the maintenance of which the Government have paid a contribution or have made an assignment of land or land-revenue, and used for the supply or storage of water;

(*b*) all works, embankments, structures, supply and escape channels, connected with such canals, channels, tanks, reservoirs or wells;

(*c*) all lands occupied by the Government for the purpose of such canals, channels, tanks, reservoirs or wells and all buildings, machinery, fences, gates and other erections occupied by or belonging to the Government, upon such lands;

(*d*) the whole or any part of a river, stream, lake or natural collection of water or natural drainage-channel, to which the Local Government have applied the provisions of section 7 of this Act or any work of which the Government have assumed control under section 7.

"Land-holder." (7) "Landholder" means a person owning an estate or part thereof and includes every person entitled to collect the income of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or of any order of any competent court or of any provision of law.

"Mamul wet land." (8) "Mamul wet land" means land in an estate which is recognized by the Government as entitled to receive water from an irrigation work, free of a separate cess, for purposes of irrigation in respect of one or more crops.

"Occupier." (9) "Occupier" means in respect of any land any person who has an interest in the land and cultivates the land himself or by his servants, or by hired labour.

"Owner." (10) "Owner" includes every person having a joint interest in the ownership of the thing specified; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to all persons having such joint interest in the ownership.

"Registered holder." (11) "Registered holder" means any person in whose name Government land is for the time being registered in the revenue accounts.

Provided that when any person other than the registered holder is in lawful management of Government land otherwise than as agent or servant of the registered holder or as mortgagee or lessee, such person shall be deemed to be the registered holder in respect of such Government land.

"Ryot." (12) "Ryot" means a ryot as defined in the Madras Estates Land Act, 1908.

"Village." (13) "Village" means any local area which is now recognized by the Local Government as a village or which may hereafter be declared by the Government or subject to their control, by the Board of Revenue, to be a village for all or any of the purposes of this Act.

"Water-course." (14) "Water-course" means any channel which is supplied with water from an Irrigation work, but which is not maintained at the cost of Government, and includes all subsidiary works connected with any such channel, except the sluice or outlet through which water is supplied to such channel.

Power to appoint officers. 5. The Local Government, or subject to such rules as may be made under this Act, any officer of Government whom the Local Government empower in this behalf, may declare, by notification, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

CHAPTER II.

Of General Rights and the Assumption of Control of Works for Public Purposes.

Right of Government to regulate flow from natural rivers and streams, etc. 6. Subject to the provisions of this Act the Government are hereby declared to have the paramount right to regulate at their discretion for purposes of irrigation or drainage the collection, retention and distribution of the water of any river or stream flowing in a natural

channal, or of any natural drainage-channel, or of any lake or other natural collection of water, or of the water collected, retained or distributed in or by any tank, reservoir, channel or other work constructed, maintained or controlled by the Government.

Exercise of such right.

7. Whenever it appears expedient to the Local Government that the said paramount right should be exercised in respect of the water of any river or stream, or of part of any river or stream, or of any natural drainage-channel, or of any lake or other natural collection of water, for the purpose of existing or projected irrigation or drainage,

or whenever it appears expedient to the Local Government for the regulation or improvement of the flow of water to or from any existing or projected irrigation or drainage work, that the Government should assume control over any work constructed or used for the purpose of irrigation or drainage or for the protection of lands from inundation, such work not having been constructed or maintained or controlled by the Government,

Issue of notification.

the Local Government may, by notification, declare that the said right will be so exercised or the said control assumed, after a day to be named in the said notification not being earlier than four months from the date thereof, unless good cause be shown to its satisfaction within two months from the date of the notification by any person interested why such action should not be taken. Such notification shall be published in the *Fort St. George Gazette* and in such other manner as the Local Government may, by rule, direct.

After issue of notification construction of work, etc., without permission prohibited and accrual of future rights barred.

8. After the issue of a notification under section 7 no person shall construct, restore, remove or alter any dam, weir, embankment, sluice, channel, or other work in connexion with such water or work without the sanction of the District Collector and no right to any supply of water from any such river, stream, natural drainage-channel, lake or other natural collection of water or from or through such work shall, as against Government, be deemed to exist or be acquired or be deemed to have been acquired except to the extent to which such water has been appropriated prior to the issue of the notification or except by grant made subsequent thereto.

Explanation.—The water of a river, stream, lake or natural collection of water or natural drainage-channel shall be deemed to have been appropriated where such water is supplied directly to a defined artificial channel above ground for purposes of irrigation, such channel not being one constructed, or maintained or controlled by the Government. The extent of such appropriation shall be determined with reference to the size of the channel and the nature and extent of the sluices and weirs governing the amount of water which enters the channel.

Powers of Local Government after notification.

9. If no such cause be shown as is mentioned in section 7, within the prescribed time, the Local Government may proceed to exercise the said right or assume the said control, and may exercise in respect of the said water or work any or all of the powers conferred by this Act.

The Provisions of Chapter VII of the Madras Estates Land Act, 1908, shall cease to apply to such water or work with effect from the date of notification under section 7.

Powers of Local Government.

10. Any notification issued under section 7 may in like manner be rescinded, revoked, or modified by the Local Government.

CHAPTER III.

Of the Control and Supply of Water and of Works generally.

In the absence of contract, water-supply to be subject to rules made by Government.

11. In the absence of a contract or so far as any such contract does not extend, all water supplied from an irrigation work, whether such supply was first made before or after the commencement of this Act, shall be deemed to be given subject to payment of water-cess at the rates prescribed by rules made by the Local Government under section 99 in respect thereof and subject to such other conditions as may be prescribed by such rules and to the provisions of the next succeeding section.

Powers of Government to control water-supply and works.

12. (1) The Local Government shall have the power, after publishing an order to that effect,

(*a*) to change the irrigation work from which water is supplied;

(*b*) to close, remove, construct, repair, alter or add to any irrigation or drainage work, or to stop or reduce a supply of water from any irrigation work;

(c) to take any other measures they may consider necessary in order to control the distribution and to regulate the flow of water from any irrigation or drainage work.

(2) No right to receive a supply of water from any particular irrigation-work shall be, or be deemed to have been, acquired against the Government under any custom or contract.

Powers of irrig.-officer in control of water-supply.

(3) The irrigation-officer in charge of any irrigation work shall have power to stop the supply of water to any water-course or to any person in the following cases for so long as he deems necessary :—

(i) whenever such stoppage is necessary for the purpose of—

(a) executing any work ordered by the Local Government or by any irrigation-officer duly empowered in this behalf ;

(b) supplying in rotation the reasonable requirements of persons entitled to a supply of water.

(ii) whenever a water-course is not maintained in such order as to prevent waste of water.

Power to enter for purposes of survey and inspection.

13. Any irrigation-officer, and any person acting under the special order of an irrigation-officer, may enter upon any lands adjacent to, or in the neighbourhood of, any irrigation or drainage work or through which any irrigation or drainage work is proposed to be made, and undertake surveys or levels thereon ;

and dig and bore into the sub-soil ;

and make and set up suitable land-marks, level-marks and water-gauges ;

and do all other acts necessary for the prosecution of any inquiry relating to any existing or projected irrigation or drainage work under the charge of the said irrigation-officer ;

and where such inquiry cannot otherwise be completed, the irrigation-officer or such other person may cut down and clear away any part of any standing crop, fence or jungle.

Power to enter in urgent cases.

14. In case of any accident happening or being apprehended to an irrigation or drainage work, or whenever necessary for the regulation, maintenance or management of such work or for the purpose of inspecting or regulating the use of water, or in case of urgency when any new work is immediately required to prevent serious detriment to the efficiency of an irrigation or drainage work, any irrigation-officer, or any person acting under his general or special orders in this behalf, may at any time enter upon any lands adjacent to, or in the neighbourhood of, such irrigation or drainage work and may execute all works which may be necessary for the purpose of repairing or preventing such accident or for constructing any new work in case of urgency or for the inspection or regulation of the use of water or for the regulation, maintenance or management of the irrigation or drainage work.

Power to enter for measuring land.

15. Any irrigation-officer, or any person acting under his general or special orders in this behalf, may also at any time enter upon any land irrigated by any irrigation or drainage work for the purpose of measuring such land.

Power to enter for depositing or obtaining materials.

16. Any irrigation-officer, and any person acting under his special orders in this behalf, may, within such distance from any irrigation or drainage work as the Local Government may, by rule, prescribe, enter upon any land for the purpose of—

(a) depositing upon it soil or other things taken from such work or materials required for use on such work ; or

(b) obtaining from it earth, stone or other material for repairing or altering such work.

Notice of intended entry on land or into building or enclosed place.

17. If any irrigation-officer or other person, in the exercise of powers conferred under this chapter, proposes to enter, otherwise than with the consent of the occupier, on any land or into any building or enclosed court or garden attached to a dwelling-house into which the water does not flow from any irrigation work, he shall previously give the occupier of such land, building, court or garden reasonable notice in writing of his intention to do so. Provided that no such notice shall be necessary for entry on land in an emergency.

Power to recover cost of repairing damage to works from occupiers of lands benefited.

18. If any damage, alteration, enlargement or obstruction to any irrigation or drainage work is unauthorizedly caused by any person, and if such person cannot, after such inquiry as the Collector may deem sufficient, be ascertained or identified, the Collector may, after notice to the occupiers of all lands which have

in his opinion benefited by such damage, alteration, enlargement or obstruction, and after hearing any representations which they may desire to make or after the expiry of such time for the submission of representations as he may deem sufficient, recover from such occupiers the cost of repairing such damage or of removing such alteration, enlargement or obstruction. An appeal shall lie from every order of a Collector under this section to the District Collector, whose decision shall be final.

Power to levy contribution towards cost of repairing irrigation works serving partly estate and partly Government land.

19. If any irrigation work serves partly land in an estate and partly Government land, and requires repair, the Collector may, after giving notice to the landholder of the estimated cost of the repair and giving him an opportunity to urge his objections, if any, execute the repair, and the charges incurred in the execution of such repair shall, in the absence of any subsisting agreement to the contrary, be divided between the Government and the landholder in proportion to the extent of Government and estate land under the said irrigation work.

Provided that any area in respect of which cess is chargeable under section 34 shall be excluded in making such division of the cost of repairs.

CHAPTER IV.

Of Water-courses.

Application to construct a water-course.

20. Any person desiring the construction of a water-course may apply in writing to the irrigation-officer requesting him to construct the water-course, and to do all things necessary for such construction at the cost of the applicant.

Procedure thereupon.

21. If the irrigation-officer considers that the construction of such water-course is expedient, he may call upon the applicant to make such deposit as he considers necessary to cover the cost of the preliminary proceedings and the amount of the compensation if any likely to become payable, and upon such deposit being made, he shall cause inquiry to be made into the most suitable alignment for the said water-course, and shall cause to be marked out the land which, in his opinion, will be necessary for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Collector of every district in which such land is situate for publication in the district gazette.

The said notice shall also call upon any person who wishes to receive a supply of water through such water-course to make his application in that respect to the irrigation-officer within thirty days of the publication of such notice. If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such water-course, and in the cost of acquiring the land for the same.

When the preliminary proceedings are completed an estimate of the cost shall be furnished to the applicant by the irrigation-officer. Such cost shall include the cost of works, if any, to be constructed for the passage, across the water-course, of water-courses already existing and of the drainage which it may intercept, and for affording proper communications across it.

Inquiry into objections.

22. Within thirty days from the publication in the district gazette of the notice referred to in section 21, any person likely to be affected by the construction of the proposed water-course or interested in the land on which it is proposed to construct such water-course may apply to the District Collector by petition stating his objection to the proposed construction. The District Collector shall inquire into the objection after giving previous notice to the irrigation-officer of the time and place at which such inquiry will be held.

Where the proposed water-course is intended to pass through more districts than one, the Collector of the district in which the head of the proposed water-course will be situated shall be the District Collector for the purposes of this section.

The District Collector shall record in writing all orders passed by him under this section and the grounds thereof.

Collector to acquire land.

23. If no objection is made or the objections, if any, are disallowed, the District Collector shall inform the irrigation-officer of the same and proceed, if necessary, to acquire the land required for the water-course under the provisions of the Land Acquisition Act, 1894, as if

a declaration had been issued by the Government for the acquisition thereof under section 6 of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section 7 of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section 17 of the said Act.

If the District Collector considers any objection to be valid, he shall inform the irrigation-officer accordingly, and the latter may, if he sees fit, alter the alignment of the proposed water-course, and the District Collector shall, after notice to the persons likely to be affected by the alteration, decide whether or not such water-course shall be constructed.

Officers authorised to acquire

24. Where the lands to be acquired, if any, are situate in different districts, the acquisition shall be made by the Collectors of the several districts in which the lands may lie.

Procedure after acquisition of land for water-course

25. When the land has been acquired, or provided by the applicant or applicants the irrigation-officer shall either permit the applicant or applicants to construct the said water-course, or shall himself construct it. Provided that no applicant shall be permitted to construct a water-course until he has paid any sum which may be due on account of the acquisition of the said land.

If the irrigation-officer shall himself construct such water-course, he shall, on its completion, give to the applicant under section 20 and to the applicant, if any, under section 21 notice thereof, and also make a demand of any sum payable by him or them on account of the cost of acquiring the land and constructing the water-course

Notwithstanding anything contained in the foregoing provisions, it shall be open to any applicant to withdraw his application before the work of construction is commenced, if he considers the cost of acquisition or the cost of the work excessive. The irrigation-officer may at any time withdraw from any work but shall, before doing so, record his reasons in writing.

Conditions binding on applicant permitted to construct a water-course.

26. When any applicant is, under the last preceding section, permitted to construct a water-course, the following conditions shall be binding on him and his representatives in interest:—

First.—The water-course and all works necessary for the passage, across such water-course, of water-courses existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it shall be constructed by the applicant, and be maintained by him to the satisfaction of the irrigation-officer.

Second.—Land acquired for the purpose of constructing a water-course under the provisions of section 23 shall be used only for such purpose.

Third.—The proposed water-course shall be completed to the satisfaction of the irrigation-officer within one year after the applicant has been given permission to construct it. Provided that the irrigation-officer may, in his discretion, extend this period.

If any of the conditions prescribed by this section are not complied with, the right of the applicant or of his representative in interest to receive a supply of water through such water-course may be put an end to by the irrigation-officer without prejudice to the exercise of the power conferred by section 33 and no compensation shall be payable for the termination of such right.

Application for extension and alteration.

27. The procedure provided in sections 20 to 26 shall apply to any application for the extension, improvement or alteration of a water-course.

Power to enter upon lands to construct water-courses.

28. (1) Any irrigation-officer empowered in this behalf, and any person acting under the special orders of such irrigation-officer, may himself construct such water-courses as he may deem necessary including works necessary for the passage, across such water-courses, of water-courses already existing and of the drainage intercepted by them and for affording proper communications across them or may extend, improve or alter any existing water-course or work.

(2) In such cases he shall follow as far as may be the procedure prescribed in sections 21 to 24 before he proceeds to construct new water-courses or extend, alter or improve existing ones.

Provided that sub-section (2) shall not apply to any measures taken for the alignment, construction, extension, alteration or improvement of a water-course supplied or proposed to be supplied from a Government channel connected with an irrigation work

during the construction of the channel or within three years after it has been opened for irrigation.

The District Collector may acquire the land required for any such water-course in the manner laid down in section 23 as if no objection had been made to the alignment.

Cost of constructing water-courses by Government to be apportioned among owners or occupiers of lands.

29. The Collector may order the recovery of the cost of constructing, extending, altering or improving any water-course under section 28, including the amount of any compensation payable or that may have been paid for this purpose and the cost of constructing works necessary for the passage, across such water-course, of water-courses existing previous to its construction and of the drainage intercepted by it, and for affording proper communicatinns across it, in proportion to the area of land supplied with water from such water-course, from the owners or occupiers of such land.

Any order passed by a Collector under this section shall be subject to appeal to the Board of Revenue, whose decision shall be final.

Supply of water on application through existing water-course.

30. Any person desiring to receive a supply of water through an existing water-course to which he was not entitled before may apply to the irrigation-officer. If it appears to the irrigation-officer expedient that such supply should be given and that it should be conveyed through such water-course, he shall serve notice on the owners or occupiers of the land supplied with water from such water-course requiring them to show cause, on a day not less than fifteen days from the service of such notice, why the said supply should not be so conveyed; and, after making inquiry, the irrigation-officer shall make an order determining whether, and on what conditions, the said supply shall be conveyed through such water-course, and such order shall be binding on the applicant and on such owners or occupiers.

An appeal shall lie from any order made by the irrigation-officer under this section to the District Collector, whose decision shall be final.

The applicant shall not be entitled to a supply of water by reason of any order made under this section until he has complied with the conditions, if any, imposed by the irrigation-officer and until he has paid the expense of any alteration of such water-course that may be necessary to his being supplied through it.

Alteration of water-courses prohibited.

31. No water-course constructed, extended or improved under the provisions of sections 25, 28 and 30 may be altered without the consent of the irrigation-officer.

Obligations of owners or occupiers of land receiving supply from a water-course.

32. Every owner or occupier of land which receives a supply of water through a water-course shall be bound—

(a) to maintain all works necessary for the passage across such water-course of any public road or irrigation or drainage work in use at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it;

(b) to maintain such water-course in a fit state of repair.

In default, the right to supply of water through the water-course may be put an end to by the irrigation-officer without prejudice to the exercise of the power conferred by section 18 and no compensation shall be payable for the termination of such right.

33. If any of the conditions or obligations imposed by sections 25, 26 or 32, is not fulfilled, any irrigation-officer duly empowered in this behalf may require the defaulter by notice in writing to execute the necessary work or repair within a period to be prescribed in such notice of not less than fifteen days, and in the case of failure, may execute the same on his behalf, and all expenses incurred in the execution of such work or repair shall be recoverable from the defaulter. Where there are a number of persons in default, such recovery shall be made in proportion to the area of land held by each of them under the water-course in question.

CHAPTER V.

Of Water-cess.

34. It shall be lawful to the Government to levy a cess upon all land to which water is supplied or upon which water is used for purposes of irrigation from any irrigation or drainage work.

Water from an irrigation or drainage work shall be deemed to be used for purposes of irrigation, whenever such water, by direct or indirect flow, or by percolation, leakage or drainage, from or

through adjoining land, irrigates any land under cultivation, or flows into a reservoir or channel and is thereafter used for irrigating such land and is in the opinion of the Collector, beneficial to the crop on such land.

Provided that no such cess shall be levied

(*a*) on Government land registered as wet unless such land being registered as single crop wet land, is cultivated with two or more irrigated crops,

(*b*) upon manul wet land except for water supplied or used for more than the number of crops recognized by Government as entitled to water free of cess.

Notwithstanding anything contained in this proviso the Local Government, subject to such rules as may be framed in this behalf, may levy enhanced assessment upon Government land classified and registered as wet in the revenue accounts and a charge for water upon manul wet land, whenever the supply of water is enlarged or otherwise improved by the Government

The Government may prescribe from time to time the rules under which and the rates at which cess shall be levied under this section and different rates for different irrigation or drainage works or different areas may be prescribed.

A cess due under this section shall be leviable at any time before the end of the revenue year succeeding that in which irrigation takes place, and the revenue year shall be the year ending on the 30th June or on such other date as may be prescribed by the Local Government.

Water-cess recoverable from land-holder or ryot or both.

35. (1) In the case of land included in an estate, the cess due under this Act shall, notwithstanding anything contained in the Madras Revenue Recovery Act, 1864, be leviable in accordance with such rules as the Government may, after previous publication, prescribe in that behalf—

(*a*) from the landholder, or

(*b*) from the ryot, or

(*c*) partly from one and partly from the other.

(2) The amount payable by a landholder or a ryot under this Act shall be a first charge upon his interest in the land.

(3) Nothing contained in this section shall affect the rights and liabilities of the landholder and the ryot *inter se* under any contract, express or implied, in regard to the payment of water-cess.

36. No civil court shall take cognizance of any suit or application questioning the rate of water-cess levied under this Act.

CHAPTER VI.

OF THE CONSTRUCTION AND MAINTENANCE OF IRRIGATION-WORKS ON SPECIAL TERMS.

Preliminary order of Government.

37. Whenever it appears to the Local Government that the construction, improvement or maintenance of an irrigation-work in any local area is not likely to be remunerative unless on the lands irrigable by such work payment of water-cess at a certain specified rate is guaranteed, the Local Government may direct the Collector or any other person to make inquiry whether it is desirable to undertake the construction, improvement or maintenance of the work.

Publication of notice of inquiry.

38. The Collector or other person appointed to make the inquiry shall publish a notice in the village or villages concerned specifying the place at which and the date (which shall not be earlier than thirty days after the date of such publication) on which the inquiry will be held. The notice shall set forth the general scheme of the proposed construction, improvement or maintenance, an estimate of the capital or recurring expenditure involved, the area which will be benefited by the scheme (hereinafter called the benefited area) and the rate at which it is proposed to levy water-cess in respect of the land within the benefited area, and shall invite the holders of such land to submit any objections or suggestions that they may desire to make on or before a date prescribed in the notice and to produce evidence, if any, in support of such objections or suggestions on the date appointed for the holding of the inquiry.

Explanation.—In this chapter the expression 'holders of land' means (1) registered holders, (2) ryots and (3) in respect of land which is private land as defined in the Madras Estates Land Act, 1908, the landholder of the estate in which such land is situate.

Implied consent of owner.

39. Every holder of land within the benefited area who fails within the period allowed by the notice to submit any objection or suggestion in the manner prescribed shall be deemed to have given his consent to the proposed scheme.

Inquiry and report by the Collector.

40. If the Collector or other person appointed to make the inquiry, after

considering any objections or suggestions duly submitted and evidence, if any, produced and taking such further evidence as he thinks necessary, finds that the holders of at least two-thirds of the land within the benefited area consent to such construction, improvement or maintenance and to the payment of the proposed water-cess, he shall embody his proceedings in a report to be submitted to the Local Government and shall also forward a statement of objections and suggestions presented to him with any remarks that he may desire to make in respect of them.

Government may abandon or proceed with the scheme.

41. Upon receipt of the report referred to in the previous section the Local Government may, after such further inquiry, if any, as may appear to them necessary either abandon the scheme or proceed with it in its original form or with such modifications as they may consider necessary; provided that, where the modifications involve a substantial increase in the benefited area or in the water-cess to be imposed, the provisions of sections 38 to 40 shall apply to the altered scheme.

Publication of the scheme as approved by Government.

42. (1) The scheme as finally approved by the Local Government shall be published in the official gazette of the district concerned and it shall embody the following particulars:—

(*a*) a specification of the work which it is proposed to construct, improve or maintain and an estimate of the capital or recurring expenditure involved thereby;

(*b*) the estimated time required for the completion of the work;

(*c*) a description of the benefited area;

(*d*) the rate at which water-cess will be imposed on the land in the benefited area, such rate being liable to periodical revision at intervals of not less than ten years each; and

(*e*) the fact that the consent of the holders of such land has been obtained as provided in this chapter.

(2) The publication under sub-section (1) of a scheme as approved shall be conclusive proof that any consent recorded therein has been duly obtained and that the scheme will benefit the area specified therein.

Modification of approved scheme or substitution of a new scheme.

43. (1) The Local Government may from time to time modify any approved scheme notified under section 42 or substitute another scheme in its stead, and the provisions of this Act applicable to a scheme notified under section 42 shall thereafter be applicable to any scheme so modified or substituted.

(2) Provided that any consent, publication or other thing required by this Act in respect of a scheme shall be necessary also in respect of the modification of a scheme or the substitution of a new scheme for an existing one.

Levy of water-cess on lands within the benefited area.

44. After the scheme has been carried out the Collector may, subject to the control of the Board of Revenue and the Local Government and subject to such rules as may be prescribed by the Local Government, levy from the holders of land within the benefited area, water-cess at the rate prescribed in section 42:

Provided that the Collector may exempt from charge any land in the benefited area on the ground that it is unable to derive any benefit from the irrigation-work.

Exclusion of jurisdiction of ordinary courts.

45. No objection shall be taken to the rate of water-cess nor shall the liability of any person to pay the cess be questioned in any civil court:

Provided that nothing in this section shall prevent any person from obtaining a declaration in the civil court that he is not liable to pay such cess on the ground that he is not the holder of the land in respect of which the charge has been made and the Collector shall be bound by such declaration.

CHAPTER VII

Of the Determination and Localization of Manul Wet Lands.

Determination of manul wet land.

46. (1) The extent of manul wet land under an irrigation work shall be the largest area irrigated from such work, free of a separate cess for water, in any one year between the date of permanent settlement or inam settlement as the case may be and

(*a*) in the case of an irrigation-work falling under sub-section 5 (*d*) of section 4, the date of the issue of notification under section 7;

(*b*) in the case of any other irrigation-work the date of passing this Act.

(2) The extent of manul wet land shall be settled by the Collector, subject to the control of the Board of Revenue

and the Government. Where the settlement is not accepted by the landholder the Collector shall refer the matter to the civil court.

(3) Nothing contained in this section shall be deemed to affect any settlement of manul wet made prior to 1st May 1917 in respect of which no suit or appeal was pending on that date. Such settlement shall be final notwithstanding any decree of a civil court subsequently obtained.

Localisation of manul wet.

47. (1) Manul wet land may be localized in accordance with rules framed by the Local Government in this behalf and any such localization made before the passing of this Act shall have the same effect as if it had been made under this Act.

(2) No civil court shall take cognizance of any suit filed to contest any localization made either before or after the passing of this Act.

CHAPTER VIII.

Of the Award of Compensation.

Compensation awardable for substantial damage.

48. Except as otherwise provided in this Act and subject to the provisions hereinafter contained, compensation shall be awarded in respect of damage caused by the exercise of the powers conferred by this Act.

Provided that—

Exception.

(1) No claim for compensation for any damage shall be entertained after the expiration of one year from the date of the exercise of any power conferred by this Act in respect of which compensation is claimed, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

(2) No compensation shall be awarded for any loss or damage sustained in consequence of—

(*a*) the stoppage or diminution of a supply of water from an irrigation work when such supply has been received or derived for the first time after the passing of this Act;

(*b*) the stoppage or diminution of a supply of water for irrigation to any Government land registered as wet in the public accounts when such land has not been irrigated at any time within five years immediately preceding such stoppage or diminution; or to any land registered as dry in the public accounts; or where no public accounts are maintained to any land which shall not have been regularly irrigated for the ten years immediately preceding such stoppage or diminution;

(*c*) the stoppage, diminution or increase of a supply of water due to causes beyond the control of Government; or due to omission to repair or render effective any irrigation or drainage work;

(*d*) the stoppage, diminution or increase of a supply of water for the period necessary to the execution of repairs to any irrigation or drainage work;

(*e*) the temporary stoppage or diminution of a supply of water within periods fixed from time to time by the Local Government of which due notice has been given;

(*f*) the stoppage, diminution or increase of a supply of water whenever and for so long as is necessary to meet in rotation the reasonable requirements of persons entitled to water for irrigation;

(*g*) the stoppage or diminution of a supply of water to any water-course not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom;

(*h*) the stoppage or diminution of flood water or of a supply of surface water not flowing in a stream and not permanently collected in a pool, tank or otherwise or of underground water not passing in a defined channel;

(*i*) the stoppage of navigation or of the means of floating timber or of watering cattle.

(*j*) deprivation of silt or diminution of the fertilizing properties of water.

Compensation for property damaged.

49. In every case of entry under sections 13, 14, 15, 16 or 28 the irrigation-officer or other person making such entry shall ascertain and record the extent of the damage, if any, caused by the entry or by anything done under the above sections, and within one month from the date of such entry compensation shall be tendered by the irrigation-officer to the landholder or the owner of the property damaged. In case of dispute as to the extent of the damage or the sufficiency of the amount tendered, he shall forthwith refer the dispute to the Collector.

The Collector shall make inquiry as to the matters in dispute and decide the amount of the compensation.

Against the decision of the Collector an appeal shall lie to the District Collector within thirty days of the date of the decision. The order of the District Collector shall be final.

Claim not to compensation to be preferred to the Collector.

50. Subject to the provisions of section 49 and save as otherwise provided, all claims to compensation for any damage sustained by reason of the exercise of any of the powers conferred by this Act shall be preferred to the Collector having jurisdiction over the local area wherein the land in respect of which compensation is claimed is situate.

Collector to determine the amount of compensation.

51. The Collector shall inquire into all claims under the preceding section and determine the amount of the compensation, if any, which should be awarded.

References to Civil Court in certain cases.

52. In cases where a temporary stoppage or diminution of a supply of water has been ordered under circumstances entitling a person to compensation under the provisions of this Act, if the compensation awarded by the Collector is not accepted by the claimant, the Collector shall refer the matter for the decision of the Civil Court except as hereinafter provided.

Procedure to be followed in inquiries.

53. Except in cases falling under sections 49 and 52 of this Act, the provisions of sections 9 to 14 (inclusive), 18 to 22 (inclusive), 26 to 34 (inclusive), 45, 51 to 55 (inclusive) of the Land Acquisition Act, 1894, shall, as far as may be, and except in so far as a contrary intention is expressed in this Act, apply to all inquiries into claims for compensation for damages resulting from the exercise of the powers conferred by this Act.

Minor claims to be finally decided by District Collector.

54. Where the amount of a claim does not exceed Rs. 1,000 all references under section 52 or 53 in respect of such claim shall lie to the District Collector instead of to the Civil Court and the decision of the District Collector shall be final.

Compensation how to be determined.

55. (1) In determining the amount of compensation to be awarded in inquiries made under section 53, regard may be had among other considerations to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed, and where the diminution in the market-value is not ascertainable, the amount shall be reckoned at fifteen times the amount of the diminution of the annual net profits of such property caused by the exercise of the powers conferred by this Act.

(2) Where compensation is claimed by a landholder on account of deprivation of the right of effecting future improvements in the irrigation of any land in his estate, from an irrigation-work falling under sub-section 6 (*d*) of section 4, regard shall be had to the following among other considerations in determining the amount to be awarded:—

(*a*) the extent and nature of improvements that are capable of being effected in respect of such land without exceeding the supply appropriated prior to the date of issue of the notification under section 7;

(*b*) the cost of such improvements;

(*c*) the cost of preparation required for utilizing the improvements; and

(*d*) the additional value which the land would acquire by the improvements.

Provided that no such claim shall be admissible where the irrigation-work is a river or stream flowing in a natural channel, or a natural drainage channel, or a lake or other natural collection of water, unless the estate in which the land is situate abuts on or is adjacent or adjacent to such irrigation-work and the land is riparian land.

(3) In cases where compensation has been awarded for any damage caused by the construction, extension, improvement or alteration of a water course or the conveyance of water through an existing water-course under sections 20 to 27 and 30, the amount of such compensation shall be recoverable by the Government as an arrear of land-revenue from the persons for whose benefit action has been taken under those sections.

Special forms of compensation for land required under the Act.

56. (1) When any land or the use thereof is required for the purpose of any irrigation or drainage work, either temporarily or permanently, the Collector may—

(*a*) with the consent of the person entitled to compensation, direct that, subject to the use of the land by the Government, so long as it may be required for the purpose of such irrigation or drainage work, the rights to the land and the enjoyment thereof in any manner not inconsistent with such

use shall remain with the person so entitled, compensation being awarded only in respect of the user by Government, or

(*b*) with the consent of the person entitled to compensation and subject to the general or special sanction of the Local Government, confer on the person so entitled, in lieu of or as part of any compensation, a right to a supply of water from such irrigation-work.

(2) Subject to the conditions of any award or order made under sub-section (1), clause (*a*) or (*b*) of this section, the person entitled to the land may, if it has been occupied for the purpose of any irrigation or drainage work for a period exceeding three years, request the Collector to make a complete acquisition of the land under the Land Acquisition Act, 1894, and the land shall be acquired accordingly.

CHAPTER IX.

Of obtaining Labour and Materials on Emergencies.

Procedure for obtaining labour and materials for works urgently required.

57. (1) Whenever it appears to an irrigation-officer that unless some work or repair is immediately executed such serious damage will happen to any irrigation or drainage work as to cause sudden and extensive public injury,

or, that unless some clearance of an irrigation or drainage work which is necessary in order to maintain the established course of irrigation or drainage is immediately executed serious public loss will occur,

and that the labourers necessary for the proper execution of such repair, clearance or work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss,

it shall be lawful for such officer to require the headman or headman of the village or villages in the vicinity to call upon all or any of the able-bodied male persons who reside or hold land in the vicinity of the locality where such repair, clearance or work has to be executed to assist in the execution of such repair, clearance or work by labouring thereat as such officer or any person authorized by him in this behalf may direct.

(2) Such officer or any person authorized by him in this behalf may also enter into and upon any immovable property in the neighbourhood of any such irrigation or drainage work and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes, straw, earth, stones or other materials found in or upon such property, and use the same for the purposes of such repair, clearance or work.

(3) Every person authorised as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Punishment for refusing or neglecting to comply with requisition.

58. Any adult male person being duly called upon by the head of his village to labour as aforesaid, who shall refuse or neglect to comply with such call without any lawful excuse shall, on conviction before a magistrate, be punished with a fine which may extend to one hundred rupees, or with simple imprisonment which may extend to one month, or with both.

Payment for labour impressed and material taken.

59. All persons labouring or detained for the purpose of labouring by day in compliance with a requisition made under section 57 or whose materials may be taken under that section shall, as soon as may be reasonably practicable, be paid by the irrigation-officer for their labour and detention or for such materials at the highest market rates for similar labour or materials for the time being prevailing in the neighbourhood. If the persons are required to work or are detained at night they shall be paid at double such rates.

Compensation for damage done in taking materials.

60. Whenever as a result of the removal under section 57 of any trees, bamboos, earth, stone or other materials, any damage over and above the price payable for such materials results directly to any person, the irrigation-officer shall pay to such person a reasonable amount of compensation for such damage.

Disputes regarding amount payable to be referred to Collector.

61. Any dispute arising between the irrigation-officer and any person as to the amount to be paid to such person under section 59 or section 60 may be referred by either party to the Collector whose decision thereon shall be final.

CHAPTER X.

Of Customary Labour.

Works on which customary labour is enforceable.

62. (1) The provisions of this chapter apply to the following irrigation and drainage works:—

(*a*) all river and spring channels;

(*b*) all tanks;

(*c*) all supply and escape channels connected with tanks; and

(*d*) any other irrigation or drainage work in respect of which the Local Government may, by notification, declare that it is customary to perform unpaid labour.

(2) It shall be lawful for the Local Government by an order to declare, in respect of all or any of the aforesaid works in any locality, that the customary labour referred to in section 63 need not be performed either wholly or in part. Such order may at any time be cancelled or modified by the Local Government.

Kudimaramat work defined. Persons who are bound to perform it.

63. Every occupier of land irrigated or drained by any irrigation or drainage work shall perform in respect of such work without payment the following customary labour hereinafter called kudimaramat work—

(*a*) filling up gullies, cracks, ruts and holes;

(*b*) removing prickly-pear, wild croton, bushes and other rank growth or pernicious weed;

(*c*) clearing away such undergrowth as may be considered by the irrigation-officer to be injurious;

(*d*) clearing sand or silt from sluices and channels;

(*e*) replacing stones which have been displaced from unmortared revetments, dams, calingulas and bye-washes;

(*f*) keeping clear the spaces between the upright stones of caliagulas except in so far as the temporary filling up of such spaces has been permitted by the irrigation-officer; and

(*g*) any other work which the Local Government may by notification declare to be customary labour in respect of any specified locality.

Explanation.—All land forming part of the registered or recognized ayacut of an irrigation-work shall be deemed to be land irrigated by such work within the meaning of this section.

Headman responsible for the performance of kudimaramat work.

64. It shall be the duty of every village headman to see that the kudimaramat work in respect of any irrigation or drainage work situated in the village or villages in his charge is duly performed.

Headman to report where kudimaramat work is neglected.

65. If such work is neglected, the headman shall report the matter to the irrigation-officer who shall call upon the headman or headmen of the village or villages in which the persons bound to do the work ordinarily reside or the land occupied by them is situate to require such persons by beat of tom-tom to carry out the work by a certain date. If the requisition be not complied with the irrigation-officer may cause the work to be done by hired labour.

Labour may be hired on behalf of recusant occupier.

66. If during the execution of kudimaramat work any person who is bound to contribute labour towards such work neglects or refuses to do so, the village headman may employ hired labourers for the performance of the labour which such person is bound to contribute.

Share of customary labour to be contributed by each occupier of land or by each village.

67. The labour which each occupier of land is bound to contribute towards the performance of kudimaramat work and the proportionate share of labour for each village where an irrigation or drainage work serves more than one village shall be determined in accordance with rules framed by the Local Government.

Liability of person refusing to contribute labour.

68. Whenever any person who is bound to contribute labour towards the performance of kudimaramat work neglects or refuses without sufficient and reasonable cause so to contribute, the irrigation-officer may levy from such person a sum not exceeding four times the value of the labour which such person is bound to contribute.

Against the order of the irrigation-officer an appeal shall lie, within thirty days of the date of the order, to the Collector whose decision shall be final.

Power to levy cess in lieu of compulsory labour.

69. (1) In respect of any irrigation or drainage work the Local Government may, in lieu of enforcing customary labour, levy an annual cess from the persons who are bound to contribute such labour, whenever a majority of such persons so desire or the Local Government consider it expedient.

The cess shall be determined and administered in accordance with rules framed by the Local Government.

(2) The Local Government may at any time abolish the imposition of the cess; and on such abolition the liability to perform customary labour shall revive.

Jurisdiction of civil courts barred.

70. No civil court shall take cognizance of any suit filed in respect of any matter dealt with in this chapter.

CHAPTER XI.

Of Irrigation Panchayats and Boards

Constitution of an irrigation panchayat.

71. Subject to such general or special rules as the Governor in Council may make in this behalf, the District Collector may, when he is satisfied that a substantial demand exists, constitute an irrigation panchayat for a village or for an individual irrigation work or part of such work

Such panchayat shall consist of the village headman, who shall be a member ex-officio, and of not more than nine and not less than three other members who shall be elected in accordance with rules made under this Act, by and from among occupiers of land who are interested by reason of such occupation in the proper maintenance of such work.

The elected members shall hold office for a period of three years, but shall be eligible for re-election Provided that an elected member shall be deemed to have vacated his office as soon as he ceases to possess the aforesaid qualification.

Constitution of an irrigation boards

72. Subject to such general or special rules as the Local Government may make in this behalf the District Collector may constitute an irrigation board consisting of two or more panchayats or delegates therefrom in respect of an irrigation work irrigating more than one village.

The appointment of delegates to irrigation boards shall be made in accordance with rules framed under this Act and every delegate shall hold his office only for such time as he continues to be a member of the panchayat of which he is the delegate.

Election of President and framing of by-laws.

73. (1) Subject to such rules as the Local Government may make in this behalf, the panchayat or board may (*a*) elect a president from among themselves and (*b*) frame by-laws for the conduct of its business.

(2) The provisions of the following sections as regards panchayats shall also apply as far as possible to irrigation boards.

Powers and duties of panchayats in respect of irrigation works placed under their control

A.

74. (1) On the constitution of an irrigation panchayat under section 71 the District Collector may place any irrigation work or any portion thereof which he considers suitable for management by a panchayat, under the control of the panchayat, subject to the condition that the panchayat shall maintain such work to the satisfaction of the Collector and subject also to such other conditions as may be prescribed by any rules framed by the Local Government in this behalf.

(2) Subject to the rules mentioned in clause (1) and to any further rules that may be framed by the District Collector in this behalf, a panchayat appointed under section 71 shall have power—

(*a*) to exercise, in respect of the irrigation-work under its control, all the functions of an irrigation-officer under this Act in regard to impressing labour and obtaining materials on emergencies and demanding and enforcing customary labour;

(*b*) to recover and administer the cess levied under section 69 in respect of the irrigation-work under its control;

(*c*) where no cess is levied under section 69 to levy in lieu of kudimaramat work, either wholly or in part, a cess at a rate not exceeding the rate which the Local Government may by rule prescribe;

(*d*) to regulate in respect of any irrigation work under its control the manner and the order in which the lands in the village under that work shall be irrigated, the time of the commencement of the issue of water, the period up to which the supply of water shall continue and the quantity to be let out;

(*e*) to take such other steps as may be necessary in order to secure the proper maintenance of any irrigation-work entrusted to its control and the duo utilization of the water contained therein; and

(*f*) generally to exercise, in respect of any irrigation work entrusted to its control, such of the powers vested in the Government as may be delegated to it by the Government by a general or special order made in this behalf.

Against an order of the panchayat levying a cess under clause (*c*) of this sub-section an appeal shall lie to the Collector whose decision shall be final.

Publication of by-laws.

75. Any panchayat constituted under section 71 may frame such by-laws as it may deem expedient for the purposes set out in the last preceding section and shall publish such by-laws in the village in such manner as the Local Government may direct.

Penalty for irrigation in contravention of by-laws.

76. (1) Any person who, in contravention of the by-laws framed and published by the panchayat under the preceding section, irrigates any land from any irrigation-work under the control of that panchayat shall be liable to pay, by order of the panchayat, a penalty not exceeding Rs. 20 per acre for such land on each occasion of such irrigation, and the panchayat may stop the supply of water to such land until the penalty is paid or recover such penalty from such person as an arrear of land revenue.

(2) Such penalty shall be levied without prejudice to the imposition of enhanced water-cess under section 96 of this Act provided that such enhanced water-cess shall be reduced by the amount of any penalty which may have been imposed and collected by the panchayat under sub-clause (1) of this section.

(3) Against an order of the panchayat under sub-section (1) an appeal shall lie to the Collector within thirty days, but only on the ground that the order or the by-law on which it is based is contrary to the orders passed by an irrigation-officer or to any terms or agreement recognized by such officer or that it is contrary to law.

(4) No civil court may take cognizance of any suit relating to any order of a panchayat imposing a penalty or stopping water except on the ground that the order or by-law is contrary to law or a decree of a civil court.

Power to prohibit retention of surface water.

77. (1) Whenever a panchayat is satisfied that the supply of water to an irrigation tank placed under its control is being materially diminished by the retention upon land in the village of surface water not flowing in a defined channel and not permanently collected in a pool or tank, the panchayat may, by notification, call upon all persons concerned to show cause by a date specified in such notification why the retention of such water should not be prohibited. The notification shall be proclaimed by beat of tom-tom in the village in which the land is situate. If cause be not shown to its satisfaction, the panchayat may, by a further notification similarly published and subject to such rules as may be framed by the Local Government in this behalf, prohibit the retention of such water on such land and the construction of any works for the purpose of such retention.

Provided that where such land is situate outside the village for which the panchayat is constituted or in which the irrigation tank is situate, the panchayat shall forward a copy of its decision to the Collector who, after giving an opportunity to the panchayat of the village in which the land is situate, and in the absence of such a panchayat to the occupiers of land in the village, to state their objections to the decision and after considering their objections, may either confirm or modify or veto the decision. The decision so confirmed or modified shall be enforced by the Collector through such agency as he may think fit.

(2) If the order of prohibition is disobeyed, the panchayat or the Collector as the case may be may impose, upon the lands benefited by such retention of surface water a penalty not exceeding Rs. 20 per acre on each occasion of such retention and may also cause the obstruction to be removed and recover the cost of so doing from the person liable.

(3) The order of the panchayat or Collector under this section shall be final.

Contribution by Government.

78. Whenever the Local Government are satisfied that, for the proper protection, maintenance or management of an irrigation work under its control, it is necessary for a panchayat to carry out work not being kudimaramat work, the Local Government may provide the panchayat with funds to meet the cost of such work either wholly or in part. When funds are so provided the panchayat shall carry out the work in such manner and within such time as the Local Government may direct.

Constitution of the Irrigation Panchayat Fund.

79. (1) All sums realized as penalties and all other receipts of a panchayat, including any contribution from the

Local Government, shall constitute a fund to be called the "Irrigation Panchayat Fund" The accounts of the fund shall be kept in the manner prescribed by rules framed by the Local Government in this behalf.

(2) The expenses incurred by the panchayat in carrying out the purposes mentioned in this chapter shall be paid out of the Panchayat Fund.

Provided that any contribution made by the Local Government for any specific purpose shall be applied solely to that purpose.

Dissolution of a Panchayat.

80. (1) If in the opinion of the District Collector any panchayat persistently makes default in the performance of the duties imposed upon it by this Act or exceeds or abuses its powers, such Collector may, after giving an opportunity to the members of the panchayat to be heard in their defence, order the panchayat to be dissolved.

(2) Where a panchayat has been ordered to be dissolved, the members thereof shall vacate their office from the date of the order of dissolution and the District Collector shall take charge of any moneys which may be in the hands of the panchayat and shall utilize the same for such purposes and in such manner as may be directed by the Local Government by rules under this Act.

Members of Panchayat not liable to be sued.

81. No member of a panchayat shall be liable to be sued for any act done in good faith in persuance of the provisions of this Act.

Panchayats under the Madras Village Panchayat Act, 1920, may act as Irrigation Panchayats.

82. Where under section 18 of the Madras Village Panchayat Act, 1920, the Local Government have transferred to a panchayat constituted under the said Act the protection, maintenance and management of an irrigation-work, such panchayat, notwithstanding anything contained in section 71 of this Act, shall, in respect of such work, be deemed to be, and be competent to exercise the powers and perform the duties of, an irrigation panchayat constituted under this Act. Such panchayat shall keep the Irrigation Panchayat Fund distinct from the "Panchayat Fund" constituted under the Madras Village Panchayat Act, 1920.

CHAPTER XII.

Of Jurisdiction and Procedure.

Suit or application for the issue of an injunction.

83. Except where otherwise provided or an order or decision is declared to be final, all claims in respect of anything done under this Act may be tried by the civil courts; but no such court shall entertain a suit or application for the issue of an injunction to restrain the exercise of any powers conferred by this Act upon the Local Government or any person or body of persons or any officer.

Power to establish special tribunal.

84. It shall be lawful for the Local Government at any time by notification to establish a special tribunal constituted as hereinafter provided for the trial of claims arising under this Act cognizable by a civil court in respect of any locality, or irrigation or drainage work or works other than claims for compensation

When such tribunal has been established no civil court shall take cognizance of any matter falling within the scope of the jurisdiction of such tribunal.

Constitution of special tribunal.

85. The special tribunal shall consist of three members, of whom one shall be an officer of the Revenue department of not less than twelve years' standing, another shall be an officer of the Public Works Department, not below the rank of an Assistant Engineer, and the third member shall be a person specially selected by the Local Government, not holding an office of profit in the service of the Government,

The official members may be appointed by name or as holding an office.

Appointment of President.

86. The Local Government may appoint one of the members of the tribunal to be its President.

Conduct of Proceedings.

87. All proceedings before the special tribunal shall be conducted and disposed of, so far as may be, in accordance with the provisions of the Civil Procedure Code.

Special tribunal to pass order which shall be final.

88. At the conclusion of the inquiry the special tribunal shall pass such order as it may consider just and proper and the order passed by it, or in the case of difference of opinion by

the majority of the members constituting it, shall be final.

Tribunals may be abolished.

89. The Local Government may, at any time, by notification abolish a special tribunal established under this Act.

Power to summon and examine witnesses.

90. Any person empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the Code of Civil Procedure.

Inquiry under this Act is a judicial proceeding.

91. Every inquiry conducted under this Act shall be deemed to be a judicial proceeding.

CHAPTER XIII.

OF OFFENCES AND PENALTIES.

Injuries when the act.

92. Whoever, without proper authority, and voluntarily, does any of the following acts, that is to say:—

(1) damages, alters, enlarges or obstructs any irrigation or drainage work;

(2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under any irrigation or drainage work or does any act which renders such irrigation or drainage work less useful for the purpose for which it was constructed;

(3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any irrigation or drainage work;

(4) constructs, removes or alters any dam, weir, embankment, sluice, channel or other work in contravention of the provisions of section 8,

(5) disobeys any order made under section 30;

(6) corrupts or fouls the water of any irrigation-work so as to render it less fit for the purposes for which it is ordinarily used;

(7) destroys, injures, defaces or moves any land-mark, level-mark or water-gauge fixed by the authority of a public servant;

(8) causes animals or vehicles to pass on or across any of the works, banks or channels of a drainage or irrigation work after such passage has been prohibited by the District Collector;

(9) causes or permits animals to graze or be tethered upon the bank or border of any irrigation or drainage work after such grazing or tethering has been prohibited by the District Collector;

(10) removes or injures any tree, bush, grass or other vegetation intended for the protection of any irrigation or drainage work;

(11) commits any breach of any rule made in accordance with the provisions of section 29 for breach whereof the Local Government has, in such rules, directed that a penalty may be incurred;

Penalty.

shall be liable, on conviction before a magistrate, in the case of offences under sub-sections (1) to (4), to a fine not exceeding two hundred rupees, or to imprisonment for a term not exceeding six months, or to both, and in the case of offences under sub-sections (5) to (11), to a fine not exceeding fifty rupees, or to simple imprisonment for a term not exceeding one month, or to both.

Power of Magistrate to compensate person injured out of fine imposed.

93. Whenever any Magistrate imposes a fine upon any person for an offence under this Act, he may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

A person convicted of injury may be required to make good the same.

94. When any person is convicted of an offence under section 92, or of the offence of mischief under the Indian Penal Code in relation to any irrigation or drainage work, the convicting Magistrate may order that he shall remove the obstruction or repair the damage or replace or repair the land-mark, level-mark, water-gauge or apparatus in respect of which conviction has taken place within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any irrigation-officer duly empowered in this behalf may carry out the work in accordance with such order and the cost thereof shall be recoverable from such person by the Collector.

Power to arrest.

95. Any irrigation-officer or other person duly empowered in this behalf in charge of or employed upon any irrigation or drainage work may remove from any land or buildings appertaining thereto any person who in his view commits any of the offences mentioned in sub-sections (1), (2), (3) and (7) of

section 92 and may, if his name and address be unknown or if he refuses to give his name or address, or there be reason to believe that he has given a false name or address, arrest such person and forthwith take or send him to the nearest Magistrate or police station.

No person arrested under this section shall be detained for more than 24 hours without being produced before a magistrate.

Enhanced water rate for irregular irrigation.

98. (1) Whenever in the opinion of the Collector water has been taken for the purpose of irrigation from any irrigation or drainage work in contravention of the provisions of section 12 or in violation of any rule made under section 99, it shall be lawful for the Collector to impose, in addition to the cess, if any, leviable under this Act and subject to such rules as the Local Government may prescribe in this behalf, enhanced water-cess not exceeding twenty times the water-cess ordinarily payable for a first irrigated crop in respect of such water.

Provided that where a person has become liable to enhanced water-cess under this section and his act also amounts to an offence under section 92, he shall not be liable both to pay enhanced water-cess under this section and also to undergo prosecution for the offence.

(2) In cases where the cost of repairing or removing damage, alteration, enlargement or obstruction to an irrigation or drainage work is recoverable under section 18, the Collector may, in addition to such cost, recover from the occupiers of lands benefited by such damage, alteration, enlargement or obstruction, enhanced water-cess not exceeding twenty times the water-cess ordinarily payable for a first crop irrigated in respect of such water. Against the order of the Collector an appeal shall lie to the District Collector, whose decision shall be final.

(3) The enhanced water-cess provided in this section shall be leviable also on lands which are ordinarily exempt from a separate cess for water.

Explanation.—For the purposes of this section the words "water-cess ordinarily payable" shall, in the case of land paying a wet rate of assessment to Government, mean the wet rate of assessment for a first crop fixed on the land.

CHAPTER XIV.

Supplementary Provisions.

Corvée and customary labour in respect of landholders' works.

97. The provisions of Chapters IX and X apply also to landholders' works of irrigation in an estate.

Provided that—

(1) the functions of irrigation-officer shall, in regard to such works, be exercised by such officer as the Local Government may appoint;

(2) all charges incurred by Government, in respect of such works, on account of employing labour, cost of materials and compensation for damage, or otherwise, shall be recoverable from the landholder;

(3) customary labour shall not be enforceable in respect of any work which serves exclusively the landholders' private land as defined in the Madras Estates Land Act, 1908.

Recovery of cesses, etc.

98. All cesses, contributions and costs payable, and all fines, penalties and other sums leviable under this Act shall be recoverable as arrears of land revenue.

Power to make rules.

99. The Local Government may, from time to time, after previous publication, make rules for the purpose of carrying out the provisions of this Act and alter or cancel any rules so made.

In particular and without prejudice to the generality of the foregoing provisions, the Government may make rules:—

(1) regarding the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(2) prescribing the cases in which and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, unless otherwise expressly provided for in this Act, shall be appealable;

(3) prescribing the persons by whom, and the time, place or manner at or in which, anything for the doing of which provision is made in this Act shall be done;

(4) prescribing the officers by whom, and the local limits within which, all or any of the powers or duties conferred or imposed by this Act shall be exercised or performed;

(5) prescribing the conditions subject to which supplies of water may be made under section 11 of this Act; and declaring the manner in which sources

of irrigation shall be assigned to any land;

(6) regarding the prohibition of the retention of surface drainage water;

(7) declaring the rates of water-cess leviable under this Act;

(8) declaring the enhanced rates which may be levied for water taken in contravention of this Act or of any rule or order made thereunder;

(9) declaring the manner and the proportion in which water-cess shall be levied from the landholder and the ryot under section 35;

(10) for the determination of the extent of manul wet land;

(11) for the localization of manul wet land;

(12) for the determination of the customary labour to be contributed by each village where an irrigation or drainage work serves more than one village or by individual persons;

(13) for the determination, collection and administration of the cess levied under section 39 in lieu of customary labour;

(14) for the conduct of business by panchayats and irrigation boards and for the maintenance of a record of their proceedings;

(15) for the election of the members of panchayats, and the appointment of delegates to irrigation boards;

(16) for the election of the president of a panchayat or irrigation board;

(17) for declaring the objects on which expenditure may be incurred by a panchayat, or irrigation board;

(18) for the conduct of inquiries by panchayats, and irrigation boards;

(19) regarding the accounts to be maintained by panchayats and irrigation boards, the audit of such accounts and the arrangements to be made for the lodging and custody of the Irrigation Panchayat Fund;

(20) prescribing the maximum rate of cess which an Irrigation Panchayat or Board may levy;

(21) prescribing the forms and the mode of service of notices and orders under this Act where no form or mode of service is prescribed by this or any other Act; and directing the manner in which any notifications shall be published; and

(22) for the guidance of officers in the exercise of the duties assigned to them under this Act.

STATEMENT OF OBJECTS AND REASONS.

The advisability of legislating in order clearly to define the position of the State in respect of irrigation was recognized as early as 1893, when the Governor in Council directed the drafting of an Act to set out "what is clearly the common law of the country, viz., that rivers and natural streams as well as springs in unoccupied or Government land belong to Government." The Bill prepared in pursuance of that direction accordingly contained a declaration to this effect and further enunciated "the undoubted right of Government to levy a reasonable tax" for the use of the water from the sources mentioned. As, however, the need for legislation did not at that time appear to be urgent, it was ordered in 1861 that the Bill should lie over for future consideration; and for many years no further action was taken.

2. In 1880 the subject was revived by the publication of the report of the Famine Commission, which drew specific attention to the "great inconveniences occasioned by the absence of any irrigation law for Madras." As a result of the discussion thus initiated a new Bill was prepared in 1882 with the object of "establishing the law relating to irrigation and navigation works." This draft, based substantially on the Bombay Irrigation Act, 1879, was referred to a Select Committee which, after making certain alterations, reported by a considerable majority in favour of its provisions. The measure as thus altered was, however, condemned by the Board of Revenue as unsuited to the conditions of the Madras Presidency, and in 1888 the Bill was, by order of Government, withdrawn.

3. The difficulties which arise from the want of a precise enactment enabling the State to control and regulate irrigation in the interests of the general community, continued to obtrude themselves upon the notice of Government, and in 1898 the Board of Revenue was consulted as to the advisability of legislating. The reference requested the Board to collate the various decisions of the civil courts and to report, in consultation with district officers, as to the nature and extent of legislation requisite in order to define and secure the paramount authority of State to control irrigation to the best advantage for the public good. The resolution submitted in reply dealt exhaustively with the subject, and while the complex issues involved were still under consideration, the Board's recommendation to legislate received strong confirmation from the report of the Indian Irrigation Commission, for the Commissioners in Volume II of their report—particularly paragraphs 272 to 286—warmly advocated the enactment of an irrigation law for this Presidency. The Government accepted the concurrent conclusions of these authorities as to the need for legislation and in 1905 placed

an officer on special duty for the purpose of drafting an Irrigation Bill. The result of his labours was subjected to prolonged scrutiny and in March 1908 a draft Bill was referred to the Board of Revenue for report in consultation with select revenue officers and representative private bodies and individuals, while the High Court and the Advocate-General were simultaneously requested to favour Government with their observations, and arrangements were made to procure a general expression of the views of competent officers of the Public Works Department with regard to the matters in issue. The replies received gave rise to radical alterations in the Bill and in the end of 1908 a re-draft was prepared eliminating the principal defects which had excited adverse criticism in the previous Bill. Framed mainly on the lines which legislation relating to irrigation had followed in other Provinces of India during the preceding 45 years, the revised Bill was referred for scrutiny to the same authorities as the measure of 1908 and at the same time was laid on the Editors' Table with an explanatory Order (G O No. 3172, Revenue, dated the 19th November 1909), so as to ensure the full benefit of public criticism and suggestion. In consequence of the opinions elicited, the revised Bill underwent further alterations both in substance and form and the measure as thus revised was approved by the Government of India in 1914. It was announced that the motion to introduce the Bill would be made at the meeting of the Legislative Council which was to be held on 20th November 1914. Before, however, the motion could be moved by the Honourable Member in charge of the Bill, a motion was made that the consideration of the subject be adjourned until a convenient date after the war. The Government opposed the motion on the ground that it was desirable to introduce the Bill in order to remove misapprehensions which existed regarding it in the mind of the public. Finally, however, the motion for adjournment was carried and further progress of the Bill had to be deferred until the conclusion of the war.

4. Since then certain legal pronouncements have been made on the subject of irrigation rights, the most notable of which is the decision of the Privy Council in the Urlam case which is reported in I.L.R., 40 Mad., page 886, in which Their Lordships held that the right to free irrigation in respect of an estate should be measured with reference to the quantity of water to which the landholder was entitled at the time of the grant. This ruling seriously altered the law relating to the levy of water-cess as it had been generally understood and administered before which was that a zamindari or inamdari right to free irrigation from the sources which were in existence at the time of the permanent settlement or room settlement was confined to the extent of the then wet cultivation. Their Lordships also made certain observations on the difficulties arising out of the obscurity of the wording of the Irrigation Cess Act VII of 1865. With a view to re-state the law and remove the uncertainty due to the defective wording of the Act, a Bill to amend the Act was framed and it was decided to introduce it as an emergent measure; but this was also dropped on account of the war. The other decisions, some of which are amazingly contradictory, relate to riparian rights and the ownership of rivers and streams based on those rights.

5. The Bill of 1914 has been revised so as to clear the doubts and difficulties created by the subsequent decisions and advantage has also been taken of this opportunity to make it a comprehensive measure by including in it provisions on water-rates and the allied subject of mamul wet, on kudimaramat and on irrigation panchayats. Whenever of recent years Bills for dealing with irrigation questions have been submitted to the Government of India, they have urged upon this Government the framing of a comprehensive enactment dealing especially with water-cess and kudimarâmat; but this Government have always demurred to it on account of the urgency of the measure they had in hand. Such an objection can no longer be urged and it is therefore proposed to have a comprehensive enactment.

6. The history of the Bill having thus been set out, it remains to expound the main objects and reasons underlying its provisions.

With the exception of Chapters VI, VII, X, XI and XII the Bill is framed generally on the model of the Bombay Irrigation Act, 1879, and the Burma Canal Act, 1905. The Bill contains a declaration of the State's rights of control over the waters of rivers, streams, etc.

7. Chapter I embodies the necessary preliminary definitions. These have for the most part been taken from the Burma Act, subject to certain modifications necessitated by local conditions. Mention may in particular be made of the substitution of the term 'irrigation work' for the word 'canal'. Clause 5 makes provision for the grant of powers under the Act to the officers charged with the duty of applying it and enables the Local Government to delegate their functions in this respect.

8. Chapter II treats of rights and the assumption of control of works not belonging to Government for public purposes.

The declaration in clause 6 of the paramount right of the State to control the waters of rivers, etc., is based on the provisions of the Indian Easement Act and on a series of judicial decisions in this Presidency.

Clause 7 enables the Local Government by notification to apply the water of any river or stream or natural collection of water for the purpose of any existing or projected irrigation or drainage work and to assume control over any work which has not been constructed or maintained by Government. Upon the issue of a notification under this chapter the Local Government will have full powers of control and regulation subject only to the payment of compensation for damage, for which provision is made in Chapter VIII.

Clause 8 prohibits private interference with the water notified or with water belonging to Government. Private rights in respect of water not already appropriated can only be acquired by grant subsequent to the date of the notification.

The clause, while safeguarding existing private rights, bars the accrual of future ones except by grant. The complications that arise from the theory of riparian rights are obviated by this provision.

9. Chapter III, relating to the control and supply of water and of works generally, deviates from the Burma model, which merely enumerates the exceptional circumstances justifying interference with the supply of water to any water-course or any person.

In view of the inconvenience noticed by the Irrigation Commission as arising from the absence of any statutory definition of the rights of Government over irrigation it has been thought preferable specifically to declare what powers are possessed by Government and irrigation officers in regard to the construction of irrigation works and the control of water-supply. Clauses 11 and 12 of the Bill have been drafted accordingly, an exception being made in cases where the conditions are governed by special contracts.

As against the arbitrary use of the powers declared ample protection is afforded to the owners of irrigated land in the shape of the compensation admissible in respect of substantial damage under Chapter VIII, but risk of obstructive action on their part is obviated by a later clause (63) which bars any suit or application in a civil court for the issue of an injunction to restrain the exercise of the statutory powers conferred upon Government and its officers.

Clauses 13 to 17 give the requisite power of entry upon land or buildings for the purpose of survey, inspection and any other action necessary for the regulation, maintenance and management of irrigation or drainage works.

Clause 18, following section 36 of the Burma Act, provides for the recovery of the cost of repairing any damage caused to such works from the occupiers of the lands which derive benefit from that damage, if the person causing it is not identifiable; provision is further made in clause 96 for the infliction of a substantial penalty, not exceeding twenty times the water-rate on the land benefited, in order to meet cases in which the actual cost of repairs is trivial and the offender a mere tool of influential persons but the mischief done affects a large extent of irrigated land and causes material injury to ryots having preferential claims to the water wrongfully diverted.

Clause 19 deals with the subject of contributions towards the repair of irrigation works which serve jointly *patta* and ryotwari land. In the interests of the ryots affected it is essential that Government should have power to carry out necessary repairs without delay, and where the expenditure so incurred benefits an estate, the landholder is equitably liable to contribute to the cost of repair unless he pays a separate cess for the water-supply which he receives.

10. Chapter IV treats of water-courses. Clauses 20 to 27 prescribe the procedure to be followed in the construction of water-courses upon application made to an irrigation officer for such purpose, while clause 28 enables the irrigation officer of his own initiative to construct new water-courses or to extend, alter and improve those already existing. In view of the importance of adequate provision for the rapid construction of water-courses in connexion with any large scheme of irrigation and in order to ensure the timely development of such schemes and the realization of the returns in the period anticipated in the financial forecasts, the procedure prescribed for the acquisition of land in the case of private applications has been intentionally simplified in the proviso to clause 28 which governs acquisitions made by an irrigation officer *suo motu* for the purpose of new works.

Under clause 29 the cost incurred by the irrigation officer on the construction, extension, alteration and improvement of water-courses is recoverable from the owners or occupants of the land irrigated by water therefrom.

The provisions of this chapter have been taken mainly from the Burma and Bombay Acts. These models have been departed from however in one respect, namely, in that the water-courses after construction will remain the property of Government and possession will not be made over to the applicants. The deviation is in accordance with the prevailing practice in this Presidency, according to which irrigation channels are ordinarily treated as State property subject to communal or private rights of user. This method of treatment, besides simplifying the Bill, has the further advantage of avoiding occasions for disputes as to rights and liabilities which would inevitably arise if the ownership of water-courses were vested in an uncertain number of private persons with varying and often conflicting interests.

11. Chapter V treats of water-cess. The provisions of the Madras Irrigation Cess Act, 1865, are embodied in this chapter but reference to 'occupancies' is omitted as this term has given rise to a number of conflicting decisions. The amendments to the Madras Irrigation Cess Act introduced by Act II of 1913 are also embodied in the present chapter with the exception of sub-section (3) of section 1-A which enables the landholder to recover from the ryot any sum paid by him between 1911 and 1913 which the ryot would have been liable to pay had the Act been in force at the time of the collection. The excepted provision has done its work and is no longer required as the claims referred to therein have become time-barred by the end of 1916. Following the recommendation of the Irrigation Commission of 1901–03 provision is also made for the levy of enhanced assessment upon Government land classified as wet and a charge for water upon *manai* wet land whenever the supply of water is enlarged or otherwise improved by the Government.

12. Chapter VI deals with the execution of works on special terms. The absence of such a provision has been felt to be a serious want in the Presidency. There are projects under

contemplation which will not be remunerative unless the payment of water-cess at a specified rate is guaranteed in respect of the land in the commanded area whether the holders of such land choose to take water or not. The ryots have expressed their willingness to do so, but the Government are advised by their law officers that under the existing law such agreements do not run with the land and are not enforceable against transferees. This chapter is intended to remedy the defect. Some of the provisions have been taken from the United Provinces Minor Irrigation Works Act.

13. Chapter VII treats of manul wet land, that is land entitled to free irrigation in an estate.

Clause 46 deals with the determination of the extent of such land. It declares that the largest area irrigated in any one year free of charge up to the date of notification under clause 7 in the case of notified works and up to the date of passing this Act in the case of other irrigation works should be recognized as manul wet. The decision in the Urlam case no doubt lays down that the landholders' right should be measured with reference to the quantity of water he is entitled to. This decision is for obvious reasons unworkable in practice; in respect of works which were in existence at the time of the grant it is almost impossible at this distance of time to determine the quantity of water to which the landholder was then entitled. Furthermore it is necessary in the interests of administration and future development of irrigation that the landholders' right should be commuted into acreage. For this purpose it seems reasonable to assume that at some time after the grant the landholder would have utilized the supplies to their fullest extent of which the largest area irrigated is a fairly accurate measure. If the landholder is able to establish that he can irrigate a larger area without exceeding his rights he will be entitled to compensation for loss of such prospective right under clause 55. It will thus be observed that effect is given to the Urlam decision as far as practicable.

The clause further provides that manul wet settlements effected prior to 1st May 1917 in respect of which no suit was pending on that date are final. The object of this provision is to preclude landholders from seeking to reopen concluded settlements on the strength of the decision in the Urlam case which was pronounced on 3rd May 1917, taking advantage of the ruling in 37 Mad., 332, that the levy of water-cess every year gives rise to a fresh cause of action. Several suit notices have been received from landholders who want to repudiate settlements effected even as far back as 1906, and unless such claims are barred there will be a crop of litigation.

Clause 47 deals with localization of manul wet land. The past history of manul wet in the Godavari and Kistna deltas has demonstrated that unless manul wet land is localized there will be serious administrative inconvenience and loss of public revenue. There still remain extensive blocks of unlocalized land in Kistna and other districts and under the existing law there is no means of compelling the landholders to localize them. Several expedients have been suggested none of which is likely to be effective and legislation seems to be the only remedy. One reason why landholders evade localization is that they apprehend suits from their ryots. Under the existing law it is open to a ryot whose land has not been recognized as wet to sue for a declaration that it should be so treated (I.L.R., 32 Mad., 423).

Sub-clause (2) bars such suits.

14. Chapter VIII brings together as far as possible all provisions relating to the award of compensation. The general principle adopted is that compensation should be granted in respect of damage caused by the exercise of the powers conferred by the Bill, and the limitations to which that principle is subjected are set out in clause 48.

Proviso (1) to that clause follows section 10 of the Burma Act and prescribes that claims to compensation must ordinarily be made within one year of the date on which the damage first accrued.

Proviso (2) is clause 32 of the Bill of 1914 which denied compensation in cases where the supply had not been utilized within twelve years previously has been omitted in view of the provision in clause 8 of the present Bill and the recognition of the right to compensation for deprivation of potential rights.

The limitations enumerated under proviso 2 are, for the most part, based on section 31 of the Bombay Act and sections 9 and 39 of the Burma Act. But special mention should be made of the items lettered (a), (b), (c) and (f). The first of these, item (a), is intended to secure greater freedom for the alteration and improvement of new extension of irrigation under which the initial arrangements are to some extent tentative and may be found after trial to require modifications the introduction of which would be seriously hindered if the holders of land newly irrigated thereunder were permitted forthwith to acquire legal rights to the continuance of the supply of water. The limitation embodied in item (b) bars claims to compensation for the withdrawal of supply of water from land registered as 'dry' in the public accounts maintained under the Madras revenue system. Item (c) as it stood in the Bill of 1909 contained the following additional words:—

"Or due to the omission of Government to repair or render effective any irrigation work."

This limitation was omitted in the Bill of 1911 on the ground that it is "too general in its terms and any reference to the subject is unnecessary by the first part of the clause and also may affect the interpretation of the general law."

The reason for the omission is not convincing. It has been held by Judicial courts that Government are not under an obligation to maintain irrigation works (20 M.L.J., 869).

This is an important statement of law and its insertion in the Bill is considered necessary for the guidance of the Revenue officers who have to deal with claims for compensation. The provision in the Bill of 1909 is therefore restored.

The limitation lettered (*j*) has been inserted because of the impracticability of estimating damages ascribed to the diminution of silt.

Clauses 49 to 55 lay down the procedure to be followed in dealing with claims to compensation. Of these clause 55 deals with compensation for potential rights. Clause 56 following the Burma model, permits the grant of compensation in the shape of right to supply of water from the irrigation work constructed.

15. Chapter IX treats of obtaining labour and materials on emergencies.

The wording of Madras Act I of 1858 relative to compulsory labour is somewhat loose and the provisions have been recast on the model of the Bombay Act VII of 1879 and the Burma Act II of 1905. The obsolete provision for determining compensation by means of panchayat is repealed.

16 Chapter X deals with *kudimaramat*. The law on the subject is now contained in section 6 of Act I of 1858 where it is most inadequately dealt with. The question of enacting more complete provisions on the subject has been raised from time to time during the last 50 years. The Commission which reported on minor irrigation works in 1870 advocated fresh legislation and drafted a Bill which was referred to the Board of Revenue. The Board supported the proposal to legislate, but Government took no further steps at the time. In 1879 the Irrigation Sub-Committee of the Famine Commission again pressed for the legislation and its views were fully endorsed by the Famine Commission. A committee was accordingly appointed to prepare a Bill which was submitted to Government in 1882 and which was introduced into the Legislative Council and referred to a Select Committee. In 1884, however, the proposed measure was withdrawn principally on the ground that additional funds had become available for the maintenance of minor irrigation works—a reason which can hardly be regarded as adequate seeing that the principal ground for enforcing customary labour is that it is required for carrying out petty works which cannot by their nature be properly seen to by Government or by any one but the people on the spot who alone are in a position to do those repairs which, trifling in themselves, may, if neglected, lead to serious injury. The Irrigation Commission of 1901-03 again revived the subject and strongly advocated the enactment of a more satisfactory law. The various Collectors have been consulted and there is a general agreement among them that the present law is inadequate for the due enforcement of *kudimaramat* and that it ought to be amended.

The chief defects of the present law are that custom has to be proved before *kudimaramat* work can be enacted, that the nature of the irrigation works for which *kudimaramat* work can be required is not clearly stated, that an inadequate penalty for failure to perform *kudimaramat* labour is provided, that sums payable have to be settled by a panchayat, that sums recovered have to go into separate village funds, that it is left uncertain whether the owner or the occupier of land is the person responsible for doing work and that no provision is made for composition for *kudimaramat* by payment of a cess or for settlement of disputes as to the shares of work contributable by villages when more than one village is concerned. Regarding the levy of a cess the Irrigation Commission of 1901-1903 observe: "We should be inclined, indeed, to legalize the imposition of cess only when the Local Government were satisfied that the *kudimaramat* system would not work or when it was desired by the people concerned. . . We think also it would be a great advantage if cess funds could be administered by local panchayats for each tank or group of tanks . . and that at any rate legislation should provide for such arrangements." The defects mentioned above have been remedied in this Bill.

17. Chapter XI treats of irrigation panchayats and boards. As already pointed out the working of the *kudimaramat* system has been unsatisfactory in many districts of the Presidency. The existence of factions in villages, the absenteeism of landlords, the want of co-operation among the ryots, added to the numerous nature of the procedure under the Madras Compulsory Labour Act of 1858, are among the principal causes which have led to its failure.

One remedy is to amend the Act as the Bill now does. A further remedy, it is thought, will be found in the development of the panchayat system. As observed by the Irrigation Commission of 1901-1903 the most satisfactory means of administering the cess that may be levied in lieu of customary labour is through panchayats.

Informal panchayats have already been formed in some villages to regulate the distribution of water, to provide for the performance of customary repairs to tanks and channels and to settle irrigation disputes. If legal force is given to the decisions of such bodies, their influence will be greatly increased. The object of the present Bill is to institute irrigation panchayats on a statutory basis.

Under the Bill irrigation panchayats may be established even in non-ryotwari areas in respect of notified irrigation works, that is, works of which control has been assumed under clause 7.

Clause 71 deals with the constitution of panchayats. The election of members is to be made by and from among occupiers of land interested in the maintenance of the irrigation work for which the panchayat is formed. The object is to exclude absentee pattadars such as vakils, sowcars, etc. Occupiers of land may or may not be residents of the village in which the land is situated. Residential qualification is not insisted on in their case as it is a very

common feature that lands in one village are cultivated by the residents of the neighbouring village. This is inevitable in the case of "beheret" (deserted) villages.

Clause 77 deals with the prohibition of the retention of surface water by the erection of bunds usually known as "achukattus" to the detriment of supply to an irrigation tank. In certain localities this evil exists to such an extent that unless remedial measures are adopted the supply to irrigation works will be seriously reduced. The doctrine which the clause lays down is not a novel one but a logical extension of the principle recognised in I.L.R., 40 Mad., 640, that in the absence of a custom to that effect a tenant holding dry land within the bed of an irrigation work in an estate has no right to obstruct the flow of rain water into the tank by putting up ridges on his land so as to retain for his cultivation the water so obstructed. The determination of what are objectionable "achukattus" is however a matter of some difficulty and the villagers themselves are the best judges. It is therefore proposed to leave it to the panchayats to deal with these cases.

16. Chapter XII treats of jurisdiction and procedure.

Provision is made for the establishment of a special tribunal to take the place of the ordinarily civil courts in respect of any locality, irrigation or drainage work or works for the trial of claims other than claims for compensation. The present-day tendency is to carry on litigation in respect of even the simplest order that may be passed by officers responsible for the management of irrigation works; not only is the time of courts taken up by such cases but also that of the officers whose orders are disputed and who become defendants in civil suits which are often carried on appeal from the munsif's to the district judges' court and sometimes even to the High Court. They drag on invariably for a long series of years and eventually give rise to conflicting or impracticable decisions. Such prolonged litigation besides being detrimental to public interests involves the parties in heavy expenditure out of all proportion to the benefit derived. Disputes arising out of matters connected with irrigation require special knowledge which the ordinary tribunals are not expected to possess and such disputes are more satisfactorily settled on the spot than by any amount of argument based on legal technicalities. It would be a tremendous advantage to all parties concerned to have a special tribunal well versed in irrigation matters which can be relied on to settle all disputes arising therefrom promptly and in accordance with the principles of equity. Such tribunal will be of exceptional value where claims have to be settled in respect of a projected work. The Bill accordingly provides for the establishment of a special tribunal whenever Local Government consider it expedient. Where intricate questions of law crop up, the tribunal is given the power to make a reference to the High Court.

Clause 83 bars the issue of an injunction by a civil court to restrain the exercise of any of the powers conferred by the Bill upon Local Government, any person or persons or any officer. The restriction to which the jurisdiction of the civil courts is thus subjected, secures that irrigation officers shall not be hampered in the exercise of their powers for the regulation and control of irrigation works and the supply of water therefrom.

19. Chapter XIII deals with offences and penalties and intentionally follows the Bombay Act in providing heavier penalties for offences of a more serious nature.

Clauses 93 and 94 enable a Magistrate dealing with an offence under the Act to award compensation to persons injured and to take measures to make good the injury done to irrigation or drainage works.

Clause 95 confers upon irrigation officers and other selected persons powers of arrest in cases where serious offences are committed within their view.

20. Chapter XIV contains supplementary provisions. Clause 97 makes it clear that labour may be impressed in regard to private works in an estate.

In clause 99 power is taken to make rules.

7th December 1923. K. SRINIVASA AYYANGAR.

(By order of His Excellency the Governor in Council)

R. RAMACHANDRA RAO,
Secy. to Govt., Law (Legislative) Dept.

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